

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DOCTOR'S ASSOCIATES, INC.,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:00cv1126 (PCD)
	:	
ROBERT C. MARINELLO &	:	
GLORIA J. MARINELLO,	:	
Defendants.	:	

**RULING ON DEFENDANTS' MOTION FOR LEAVE TO AMEND ANSWER/
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION**

Defendants, Robert Marinello and Gloria Marinello, move for leave to amend their answer to the application to confirm the arbitration award and move to dismiss the application for lack of subject matter jurisdiction.¹ For the reasons set forth herein, defendants' motions are denied.

I. BACKGROUND

By order dated September 28, 2001, plaintiff's application to confirm the arbitration award was granted and defendants' motion to vacate the arbitration award and motion for appointment of counsel were denied. Defendants now move for leave to amend their answer to allege lack of subject matter jurisdiction and move to dismiss the plaintiff's application for lack of subject matter jurisdiction claiming that the matter was before a Massachusetts state court. The only document pertaining to a state court proceeding offered is the order dismissing a claim based on the parties' decision to arbitrate the dispute. There is no record of an active state court proceeding.

¹ Defendants entitle their motion to dismiss as a "Motion to Amend Opposition to Dismissal Motion to Dismiss for Lack of Subject Matter Jurisdiction." Defendants rely on FED. R. CIV. P. 12(b)(1), thus the motion is properly characterized as a motion to dismiss.

III. FAILURE TO CONFORM WITH REQUIREMENTS OF SUPPLEMENTAL ORDER

Defendants move to dismiss the application to confirm the arbitration award pursuant to FED. R. CIV. P. 12(b)(1) and move to amend their answer to add the defense of lack of subject matter jurisdiction. Neither motion was filed in compliance with the Supplemental Order. In light of the September 28, 2001 order granting the application to confirm the arbitration award, compliance with the Supplemental Order is waived on this occasion, and the merits of the motions will be addressed.

III. RULING ON MOTION FOR LEAVE TO AMEND ANSWER TO ASSERT DEFENSE OF LACK OF SUBJECT MATTER JURISDICTION

FED. R. CIV. P. 15(a) states that “leave shall be freely given when justice so requires,” thus amendments “should normally be permitted.” *Nerney v. Valente & Sons Repair Shop*, 66 F.3d 25, 28 (2d Cir. 1995). “[F]utility of the amendment, among other factors, [is] reason[] to deny leave.” *John Hancock Mut. Life Ins. Co. v. Amerford Int’l Corp.*, 22 F.3d 458, 462 (2d Cir. 1994).

Defendants argue that, by virtue of presenting this claim in some form before the Massachusetts state court, any review by this court is precluded for want of subject matter jurisdiction. The only evidence of proceedings before the Massachusetts court offered by defendants is an order dismissing the claim. There is therefore no evidence of an active state court proceeding and, furthermore, no evidence that the present application is an impermissible attempt to appeal the dismissal, *see Doctor’s Assocs., Inc. v. Distajo*, 107 F.3d 126, 137-38 (2d Cir.), *cert. denied*, 522 U.S. 948, 118 S. Ct. 365, 139 L. Ed. 2d 284 (1997) (discussing considerations relevant to arbitrations involving state court judgments). If evidence of anything, the order dismissing the complaint provides some indication that arbitration was appropriate under the circumstances.

It is further noted that federal district courts are empowered to stay proceedings in state courts to compel the arbitration of disputes pursuant to valid arbitration agreements. *See* 9 U.S.C. § 4. The defendants' motion for leave to amend its answer is denied because the asserted defense is without merit and thus the amendment would be futile.

IV. RULING ON MOTION TO DISMISS APPLICATION FOR SUBJECT MATTER JURISDICTION

Based on the discussion in Part III, defendants' motion to dismiss plaintiff's application to confirm the arbitration award for lack of subject matter jurisdiction is denied.

V. CONCLUSION

Defendants' motion for leave to amend their answer (Doc. 23) is **denied**. Defendants' motion to dismiss (Doc. 24) is **denied**. The Clerk shall close the file.

SO ORDERED.

Dated at New Haven, Connecticut, October __, 2001.

Peter C. Dorsey
United States District Judge